IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Smt.Mangi & ors. Vs. Harlal & ors.

S.B.CIVIL MISC. APPEAL NO.119/1992

Against the award dated 23.10.1991 made by the Motor Accidents Claims Tribunal, Jodhpur in MAC Case No.100/1989

Date of Judgment : 6th July 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.J.Gehlot for the appellants
Mr.D.S.Sodha for Mr.Kuldeep Mathur for the respondents

BY THE COURT:

This is a claimants' appeal preferred against the award dated 23.10.1991 made by the Motor Accidents Claims Tribunal, Jodhpur in MAC Case No.100/1989 seeking enhancement over the amount of compensation of Rs.64,831/- awarded by the Tribunal to the appellants on account of accidental death of Shri Sona Ram, husband of appellant No.1, father of appellants No.2 to 5 and son of appellant No.6.

Brief facts relevant for determination of the questions involved in this appeal are that the claimant-appellants made the application seeking compensation with the submissions

that on 03.03.1989 the deceased Shri Sona Ram was riding on his moped Hero-Magestic bearing registration No.RPA 8356 and was coming to Pipar City from Rinya; about 3 kilometers from Pipar City, a military truck bearing registration No.84D 56384N driven by non-applicant No.1 hit the deceased from behind and the truck run over the deceased and dragged the moped to 71 feet. Stating the liability of the respondents to compensate on account of the loss occasioned to the claimants because of untimely accidental death of Sona Ram, it was submitted that the deceased was 45 years of age and he was skilled agriculturist and businessman, managing two shops of agriculture produce at Pali and Pipar City and cultivation at Pipar City, earning Rs.8000/- per month. It was submitted that the deceased had substantial longevity of life available with him as his grandfather expired in 90 years of age and his father aged 105 years was still alive. It was submitted that the deceased was the only earning member of the family and the claimants were dependent upon him. Stating various losses on different heads, the claimants made a claim of Rs.5,83,500/- as compensation.

The non-applicants No.2 and 3 Union of India and Officer Commanding, 312, Field Ambulance submitted a reply to the claim application and in relation to the accident it was averred that the said military truck was proceeding in the

normal prescribed speed and was following a trolley; that ahead of the trolley, deceased was on his moped; that suddenly the deceased without any signal took a turn towards Kuchcha road on the right hand side of main road; that the non-applicant No.1 tried his best to avoid the accident and took the truck to the extreme right down the road, yet the deceased dashed against the truck; that the truck was immediately halted and then it was noticed that the moped rider had expired; that in order to ensure safety of the vehicle (truck) and goods therein, it was taken to Panchayat building and then the matter was reported to the police. It was, therefore, submitted that accident was not a result of negligence of the truck driver. The quantum of compensation claimed by the appellants was also put to contention while denying income and contribution of the deceased. On the pleadings of the parties, the Tribunal framed following issues for determination of the questions involved in the case:-

> "(1) क्या दिनांक 3.3.89 को सुबह 8.30 बजे जवासीया फाटक व पीपाड़ सिटी के बीच अप्रार्थी सं० 1 हरलाल ने मिलेट्री की ट्रक सं० 84 डी 56384 एन. को तेजी, लापरवाही से चलाते हुए हीरो मैजेस्टिक आर.पी.ए. 8356 पर अपनी साईड में जा रहे सोनाराम के पीछे से टक्कर मारी जिससे ट्रक का अगला चक्का सोनाराम के सिर के ऊपर से सिर को कुचलता हुआ निकला और हीरो मैजेस्टिक को 71 फीट तक घसीटता हुआ ले गया और सोनाराम की मौके पर ही मृत्यु हो गई ?

(2)क्या प्रार्थीगण 5,83,500/- रूपये बतौर क्षतिपूर्ति अप्रार्थीगण से प्राप्त करने के अधिकारी हैं ? यदि हॉ तो कितनी राशि और किस-किस अप्रार्थी से ?

(3)क्या उक्त दुर्घटना सोनाराम द्वारा अपनी लूना मोपेड़ को लापरवाही व असावधानी से चलाने तथा यातायात के नियमों की अवहेलना करने के फलस्वरूप घटित हुई । यदि हॉ तो इसका क्या असर है ?

(4) दादरसी ?

In evidence, claimants examined PW-1 Mangi (claimant No.1), PW-2 Baksa Ram, the alleged witness of the scene of occurrence, PW-3 Amra Ram (claimant No.2) and PW-4 Babulal the alleged eyewitness to the accident. The non-applicants examined DW-1 Harlal, driver of military truck and DW-2 Mohan Chand Pandey said to be accompanying the truck at the time of accident.

It may be pointed out that though the claimants produced relevant documentary evidence including certified copies from the Court of Munsif and Judicial Magistrate, Pipar City in relation to CR No.25/89, it appears that the claimants have omitted to get all the necessary documents exhibited in evidence. Record shows that an application was moved on behalf of the claimants on 07.02.1991 for dispensing with formal proof of the said certified copies that are public

documents; and on 07.02.1991 the Tribunal adjourned the matter for reply and arguments on the application and so also for evidence of the claimants but thereafter the Tribunal proceeded with the evidence and recorded the statements of the witnesses produced by the parties and marked certain documents as exhibits but relevant documents including site inspection report and site plan dated 03.03.1989 have not been so exhibited. Be that as it may, the said documents being certified copies and being undisputed and having direct relevance to and bearing on the questions involved in the case deserve to be taken into consideration. The site plan and site inspection report have, therefore, been marked as Exhibits C/1 and C/2 respectively by this Court.

After evidence of the parties, learned Judge of the Tribunal proceeded to determine the questions involved in the case and in issue No.1 after examining the evidence came to the conclusion that the accident occurred particularly for the deceased himself taking sudden right hand side turn without proper indication and the case was clearly of negligence of both parties; and the learned Judge took contributory negligence of the deceased at 60%. Taking up quantification of compensation, the learned Judge fixed the income of the deceased at Rs.1500/- per month and his contribution to the claimants at Rs.1000/- per month and applying a multiplier of

15 assessed pecuniary loss at Rs.1,80,000/- but then deducted Rs.30,000/- on account of lump sum payment. Learned Judge further found reasonable to allow Rs.5000/- to the wife of the deceased for loss of consortium and Rs.10,000/-in all to the other claimants for loss of love, affection and services and thereby added Rs.15,000/- to the amount of pecuniary loss and arrived at a figure of Rs.1,65,000/-. Thereafter, learned Judge of the Tribunal further allowed Rs.1,000/- as transportation expenses for taking the deceased from the site of accident to hospital and from hospital to his residence. Learned Judge further allowed Rs.1078/- towards repairing of the moped. Learned Judge disallowed funeral expenses with the observations that the expenses incurred in funeral are inevitable and the same cannot be granted. Of course, the claimants made a claim for the expenses incurred on other rites that were also disallowed. After making this much of the calculation, learned Judge of the Tribunal observed that the claimants were entitled to an amount of Rs.1,62,078/- and then deducted 60% from this amount on account of contributory negligence of deceased and held claimants entitled for an award of Rs.64,831/- and allowed interest at the rate of 12% per annum.

Assailing the award aforesaid learned counsel Mr. J.Gehlot appearing for the appellants has strenuously

contended that learned Judge of the Tribunal has been seriously in error in holding the deceased to have contributed to the accident and in fixing his contributory negligence at 60%. Learned counsel submitted that a look at the situation at site makes it apparent that deceased was run over by the offending truck on its extreme wrong side and the truck travelled an abnormally long distance even after the accident that shows that the vehicle was being driven at a brisk speed and in uncontrolled manner. Learned counsel further submitted that the Tribunal has been seriously in error while quantifying compensation inasmuch as in the present case, there was no reason or justification for the Tribunal not to have accepted the income of the deceased at Rs.8,000/- per month who was engaged in grocers' business and also in agriculture and the Tribunal has further been seriously in error in adopting a multiplier of 15 only and in further deducting Rs.30,000/- from out of the loss assessed. Learned counsel has submitted that award remains grossly inadequate and deserves suitable enhancement. Learned counsel for the respondents has strenuously opposed the submissions made by the learned counsel for the appellants and has pointed out that the respondents have clearly established by evidence that the accident occurred only because of deceased taking a turn to the right hand side without indication and that truck was

being driven at a reasonable speed and there was no such negligence on the part of the driver of the truck for which he could be held responsible even at 40% as held by the Tribunal. Learned counsel further submitted that the Tribunal has liberally assessed the amount of compensation to the claimants and there is no scope for any enhancement.

Having heard learned counsel for the parties and having scanned through the entire record, this Court is clearly of opinion that the impugned award deserves suitable modification in its finding on the question of negligence and so also on quantification of compensation.

So far contribution to the occurrence is concerned, a bare look at the situation at site particularly as given out in the site plan and site inspection report prepared by the Investigating Agency, Ex.C/1 and Ex.C/2, makes it apparent that deceased was on his moped and was hit at the junction point of the main road with a kuchcha road that was situated at the right hand side of the direction of the vehicles in question. It has been suggested on the part of the respondents that their truck was following a trolley and the said trolley was following the deceased who was on a moped and then deceased took a turn to the right and driver of the truck attempted his best to avoid collision and therefore took his truck down the road. It is no doubt true that the truck was taken down the road on its

right hand side but the fact nevertheless remains that deceased was hit at the junction point of two roads and then was dragged for nearly 71 feet and even thereafter the truck could come to halt after taking a circular route to the left at a further distance of about 30 feet after crushing the victim. From the statement of driver of the truck Harlal, DW-1 it is apparent that the truck was not its lane and had come out in order to overtake the vehicle running ahead of it; and at that particular moment, the moped rider i.e. the deceased took turn to right hand side. It is apparent that the truck was in higher speed as it was in the process of overtaking another vehicle and it had severed from its lane and had come out to its right. In that scenario, when the moped rider took turn towards the right hand side, the truck driver was not in a position to control the vehicle and though took the vehicle down to the right hand side but could not bring it to a halt and proceeded to crush the moped driver. From the statements of Harlal DW-1, and the site reports Ex.C/1 and Ex.C/2, possible scenario emerging is that the truck had severed to its right too much maintaining higher speed and faced suddenly with the moped, the driver was not in a position to control and halt the vehicle. Having examined the statement of the truck driver Harlal, this Court is satisfied that larger share of negligence remains on the part of the truck driver and not on the part of the victim. When the

moped was ahead of a trolley that was ahead of the truck, even if the moped took turn to the right, at the moment of taking such turn, there was sufficient distance between the truck and the moped; and if the truck had not severed too much to the right and was at its normal speed and in the control of the driver, it would have been brought to halt even before the collision, or at least immediately thereafter at the junction point itself. In the overall circumstances of the case, this Court is of opinion that the Tribunal has been in error in taking the moped rider's contributory negligence at 60%. The accident was a result of negligence of both but contributory negligence of the moped rider remains at 40% maximum and not beyond. Finding of the Tribunal fixing responsibility of the deceased at 60% is, therefore, modified and his contributory negligence is taken at 40%.

So far quantification of compensation is concerned, the calculation and assessment made by the learned Judge of the Tribunal are not based on relevant principles nor on proper appreciation of evidence and not correct even on arithmetical calculation. It has been established on record that deceased was engaged in grocer's business and so also in agriculture and even if claim of Rs.8000/- per month by the claimants be treated as exaggerated, it has been unjustified on the

part of the Tribunal to have estimated his income only at Rs.1500/- per month. In the overall circumstances of the case and the kind of business deceased has been shown to be engaged in, chances of the deceased making reasonable earning in the range of about Rs.2200/- to Rs.2500/- per month cannot be ruled out and even after providing for reasonable expenditure by the deceased upon himself, a minimum amount of Rs.1500/- per month (i.e. Rs.18,000/- per annum) could have been taken as contribution of the deceased to the family. In this view of the matter, a reasonable multiplicand of Rs.18,000/- deserves to be adopted and in view of the age of deceased at 45 years, even if a multiplier of 15 is provided, the minimum pecuniary loss to the claimants stands at Rs.2,70,000/-. The wife, children and father of the deceased deserve suitable compensation towards loss of consortium and loss of love, affection, guidance and services; and a sum of Rs.10,000/- to wife and Rs.5000/- to each of the other claimants deserves to be allowed. Therefore, the claimants are further entitled for Rs.35,000/- towards non-pecuniary loss. Learned Judge of the Tribunal has allowed Rs.1000/- towards transportation expenses and Rs.1078/- towards repair of moped. Such compensation deserves to be retained. Learned Judge has proceeded to deny funeral expenses on altogether irrelevant considerations

and this Court is of opinion that funeral expenses could be allowed in the sum of Rs.2000/-. The loss for the claimants, therefore, stands at Rs.3,09,078/- (Rs.2,70,000/- + Rs.35,000/- + Rs.1,000/- + Rs.1078/- + Rs.2,000/- = Rs.3,09,078/-). Providing for 40% contributory negligence of the deceased and deducting Rs.1,23,632/- from the aforesaid amount, the claimants are entitled to a compensation amount of Rs.1,85,446/- as against the amount of Rs.64,831/- allowed by the Tribunal.

Having regard to the circumstances of the case and in view of the enhancement being made herein, it is considered appropriate that interest on the enhanced amount of compensation of Rs.1,20,615/- (Rs.1,85,446 - Rs.64,831) be allowed to the appellants at the rate of 7.5% per annum from the date of filing of the claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award is modified and further award of Rs.1,20,615/- is made in favour of the appellants-claimants who shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum. It shall be required of the respondents to deposit the amount payable under the modified award within 30 days from today with the Tribunal and upon deposit, the Tribunal shall carry out the apportionment and shall issue directions for cash/term deposit

in the same manner and proportion as already directed in the impugned award. In the circumstances of the case, the parties shall bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

MK